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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

DARYL G. HURLIC,

Defendant and Appellant.

B295322

(Los Angeles County
Super. Ct. No. TA137755)

APPEAL from a judgment of the Superior Court of Los Angeles County. Michael Shultz, Judge. Affirmed.

Edward Mahler for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Zee Rodriguez, Supervising Deputy Attorney General, and Paul S. Thies, Deputy Attorney General, for Plaintiff and Respondent.

* * * * *

In *People v. Hurlic* (2018) 25 Cal.App.5th 50 (*Hurlic I*), we remanded this case to enable the trial court to exercise its discretion whether to strike the 20-year firearm enhancement imposed in this case. The trial court declined to do so. Daryl Hurlic (defendant) again appeals, now on the ground that the court misunderstood the full extent of its discretion. Because the court clearly indicated that it would not strike the enhancement “under any circumstances,” we affirm.

FACTS AND PROCEDURAL BACKGROUND

Defendant and another individual drove into rival gang territory, where defendant opened fire on three pedestrians—striking one in the leg, striking a second in the chest, and narrowly missing the third. The People charged defendant with three counts of premeditated attempted murder (Pen. Code, §§ 187, subd. (a), 664), and as to each count alleged multiple firearm enhancements (§ 12022.53, subds. (b)-(d)) and a gang enhancement (§ 186.22, subd. (b)).

Pursuant to a plea agreement, defendant ultimately pled no contest to a single count of attempted murder (without the premeditation allegation) along with an enhancement for discharging a firearm (without the causing great bodily injury allegation) under section 12022.53, subdivision (c). The trial court sentenced defendant to 25 years in prison, comprised of a five-year base sentence plus the 20-year firearm enhancement. The People dismissed the remaining two attempted premeditated charges, the remaining firearm allegations, and the gang allegations.

Defendant appealed his sentence, arguing that the newly effective Senate Bill 620 (2017-2018 Reg. Sess.) for the first time granted trial courts the power to strike his 20-year firearm

enhancement, that Senate Bill 620 did not take effect until *after* the trial court had sentenced him, and that he was entitled to a remand for the trial court to consider whether to exercise its newfound discretion. We agreed with defendant. (*Hurlic I*, *supra*, 25 Cal.App.5th at p. 59.)

On remand, defendant, through his counsel, asked the trial court either to “strike the” 20-year enhancement entirely or to consider a “slight modification” of that enhancement to more of “a middle ground” or “mid[]point” sentence. The People responded that striking the 20-year enhancement entirely and leaving defendant with a five-year sentence would be “extremely unfair and unjustified.” After recounting the circumstances in aggravation (namely, that defendant’s crime was “egregious and violent” because he “developed some type of plan about how to go about killing people” and then tried to “destroy . . . evidence” by urinating on his hands to eliminate gunshot residue, that the victims were vulnerable and that defendant was the shooter) and the circumstances in mitigation (namely, that his prior criminal record was “insignificant”), the court declined to strike the firearm enhancement.

Defendant filed this timely appeal.

DISCUSSION

Defendant’s sole argument on appeal is that the trial court abused its discretion in refusing to strike the 20-year firearm enhancement because the court mistakenly believed that its discretion was limited to either striking the enhancement or leaving it intact when, under the later-decided decision of *People v. Morrison* (2019) 34 Cal.App.5th 217, 222-223 (*Morrison*), the court also had the discretion to impose a *lesser* firearm enhancement. (See *People v. Carmony* (2004) 33 Cal.4th 367, 371

[decision not to strike sentencing allegation reviewed for an abuse of discretion]; *People v. Billingsley* (2018) 22 Cal.App.5th 1076, 1081 [trial court abuses its discretion if it makes a decision without “[a]ware[ness] of the scope of its discretionary powers”].)

We need not decide whether the court was aware of the full scope of its discretion because the court “clearly indicated . . . that it would not . . . have stricken” the firearm allegation and imposed a lesser firearm allegation even if it had been aware of its discretion to do so. (*People v. McDaniels* (2018) 22 Cal.App.5th 420, 425). The trial court stated:

“There’s just no way that I believe *under any circumstances* that the interests of justice, and that includes everyone [–] the victims in this case, the community that you engaged in this violent conduct . . . , society in general . . . and [defendant] – that allowing [defendant] to be released early from an agreed-upon disposition in the way that this disposition was made where [defendant] would no longer be facing potential of multiple life sentences is in the interest of justice.”

(Italics added.) The court’s statement that it would not “under any circumstances” reduce defendant’s sentence below the “agreed-upon” 25-year sentence is about as “clear [an] indication” as possible the court will not consider any reduction in defendant’s sentence, no matter how small. Defendant urges us to read the court’s language “in the context in which it was made,” but we decline to inject uncertainty into the court’s unequivocal pronouncement.

DISPOSITION

The judgment is affirmed.

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_____, J.
HOFFSTADT

We concur:

_____, P. J.
LUI

_____, J.
ASHMANN-GERST